SCOTTISH LEGISLATION 1987

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Although 1987 may not be described as an *annus mirabilis* for Scottish legislation, it must be admitted that several remarkable Acts were passed. In a year with a general election, it was something of an achievement that nine out of the fifty-seven Acts passed were *Scotland only* ones, although several were brief private members' Bills obviously planted by the government. Eight of the nine completed their Parliamentary course before the election.

The *Animals (Scotland) Act* and the *Debtors (Scotland) Act* brought long-awaited reforms. The *Criminal Justice (Scotland) Act* is devoted mainly to adding to the powers of the courts and of various officials in the fight against drug trafficking and serious fraud. Finally, the *Abolition of Domestic Rates Etc (Scotland) Act* did much more than that. It introduced several varieties of machinery for collecting community charges, but before it is fully operative it will have undergone many amendments to keep it in step with the corresponding English legislation of 1988.

Chapter Number

9. *The Animals (Scotland) Act*. The gestation period of this Act was a full quarter of a century. In 1963 the Law Reform Committee for Scotland recommended that the common law rule of strict liability based on knowledge of the vicious propensities of an animal should be replaced by the ordinary rules of liability based on negligence or *culpa*(Cmnd 2185).

However, following the Report of the Royal Commission on Civil Liability and Compensation for Personal Injury in 1978 (Cmnd 7054) under the chairmanship of Lord Pearson, the Scottish Law Commission published a consultative memorandum (No 55) in 1982, and then in 1985 its report, "Obligations: Report on Civil Liability in Relation to Animals" (Scot Law Com No 97, 1985-86 HC4). As usual, a draft Bill was annexed to the report, and this is closely followed in the present Act.

The Act imposes strict liability on the keeper in certain circumstances. "Keeper" is defined at length. Basically a keeper is the owner or possessor of the animal, or a person who has actual care and control of a child under the age of 16 who owns or possesses the animal.

A person looking after an animal temporarily for its or any other person's or animal's protection is not regarded as having possession, while a person abandoning or losing an animal continues to be regarded as its keeper until someone else acquires ownership or possession. (The Crown does not become owner of abandoned animals.)

For the keeper to be liable for injury or damage caused by an animal, the animal must belong to a species or be a hybrid, or be of a variety, age or sex, which, unless controlled, because of its attributes and habits is likely to injure severely or to kill people or animals, or to damage property. The injury or damage must be directly referable to these attributes or habits.

Animals scheduled in the *Dangerous Wild Animals Act 1976 (c 38)* are expected to injure or kill by biting, savaging or harrying. These range from emus to adders. Four-footed farm animals (including deer) are considered to be likely to damage land and crops materially.

If you happen to catch bovine tuberculosis from innocent contact with an infected cow, it seems that there is no liability under this Act, but if you are bitten by a rabid dog and contract rabies, you will have a claim against its keeper.

The keeper is not liable when a person injured by an animal is the author of his own misfortune, or is an intruder and the keeping and use of the animal was reasonable, for purposes of protection of persons and property. If the animal is a guard dog, within the meaning of the *Guard Dogs Act 1975 (c 50)*, there must be compliance with the provisions of that Act – these include the need for warning notices at each entrance to the premises.

The occupiers of land may detain any animal straying on to land without anyone apparently in control of it, in order to prevent its causing injury or damage.

Perhaps it will be regretted by some readers that the Act does not apply to injury or damage caused by the mere presence of an animal on the road or elsewhere. In these circumstances the ordinary law of negligence will apply. There is therefore no change in our law where, for example, a pedal or motor cyclist collides with a black labrador in an ill-lit street at night.

It appears that on the continent, in jurisdictions whose law is based on the Napoleonic Code, there is strict liability, which may be covered cheaply by insurance.

This liability may be based, theoretically, on the principle that the person who enjoys the economic or social benefits derived from owning an animal, or who creates a risk to others because of such ownership, should face up to the consequences of any harm caused by the animal, irrespective of fault.

Where a person kills or injures an animal, it will be a defence to prove that the act was done in self defence, or for the protection of another individual or livestock (so long as that person was the keeper of the livestock, owner or occupier of the land on which it was present, or was authorised by any of these). However, self defence and protection are limited to cases when the defender has reasonable grounds for believing that there are no other practicable means of dealing with the situation, whether or not the animal is under the control of any individual.

The Crown (ie "the state") is expressly bound by this Act, but not the Queen in her private capacity. So the hapless hiker who has an unpleasant encounter with the royal corgis on Balmoral estate will have to look elsewhere for his remedy.

Chapter Number

18. *Debtors (Scotland) Act.* The Scottish Law Commission's Report on Diligence and Debtor Protection (Scot Law Com No 95, 1985-86 HC 5), published in November 1985, provides the basis of the *Debtors (Scotland) Act.* This Act repeals a dozen pre-Union statutes, the oldest going back to 1503, as well as part or all of about 30 others. The Act is divided into seven parts.

Formerly the Sheriff could order payment by instalments in decrees from summary causes only. Now Part I of this Act provides for the making of time to pay directions or orders, as explained below, in all cases, in favour of an individual debtor, who owes money personally or in a representative capacity (such as a tutor or curator bonis), or as a partner of a firm. These directions or orders give the individual time to pay by slowing down the usual procedures for enforcing a court decree, known as the "execution of diligence", by unsecured creditors by way of arrestment of money due to the debtor or poinding of his goods and their subsequent sale. ('Poinding' is pronounced 'pinding', and means to empound.) However, secured creditors may continue to call up their standard securities over land (popularly called "mortgages") or exercise their liens, etc., over goods or documents of a debtor, but these directions or orders may not be made where a time order has been made under the *Consumer Credit Act 1974* (C39).

Part I enables the Court of Session or the Sheriff, on an application by

the debtor, to make a "time to pay direction" when granting decree for payment of any principal sum of money – the sum awarded (including any already quantified pre-decree interest) or expenses or both. Payment may then be by instalments at regular intervals or as a lump sum at the end of a specified period of time. Interest on the principal sum will also be payable by instalments, after payment of the principal sum. Time for making these several payments is calculated only from the date when the creditor has intimated the court's decree to the debtor, and specified the amount of interest due, if it is claimed.

At first a time to pay direction will be competent only when the debt (not counting interest and expenses) does not exceed £10,000. This may be increased by regulations made by statutory instrument by the Lord Advocate.

The making of a direction is not competent in relation to the award of a capital sum following divorce, nor for any of the extensive list of periodical allowances or alimentary payments awarded by Scottish courts or by other jurisdictions, collectively described as "maintenance orders", which are covered by earlier legislation. Similarly, payments of certain taxes, rates, and the community charges, and of civil penalties for failure to give a registration officer information under the *Abolition of Domestic Rates Etc. (Scotland) Act*, are excluded. The direction may be recalled or varied by the court which granted the decree, on the application of either party, in the event of any change of circumstances, if it appears reasonable to the court to do so.

So long as a time to pay direction is effective, the ordinary forms of diligence open to an unsecured creditor are in suspense. The creditor may follow the usual enforcement procedures if the direction lapses. It may lapse through default by the debtor, as when he is two instalments in arrears when a third is due, or if he is 24 hours overdue with a lump sum payment. It will also lapse if his estate is sequestrated (normally, on the petition of other creditors), or if he grants a voluntary trust deed for the benefit of his creditors generally, under the *Bankruptcy (Scotland) Act 1985 (c66)* or alternatively if he enters into a non-statutory composition contract with them.

Somewhat similar to a time to pay direction is a time to pay order. Once diligence has been commenced against him, after the granting of the original decree, he may apply to the sheriff. The sheriff may make an order in respect of any outstanding debt, or interest claimed by the creditor. The order is subject to limitations similar to those hedged about the making of a time to pay direction. The order may not be made if diligence has proceeded so far that goods belonging to the debtor have been poinded, or his goods have been otherwise arrested,

and a warrant for their sale been granted but not yet executed, until the diligence is completed. Otherwise the progress of the diligence might be jeopardised. A debtor who has already had the benefit of a time to pay direction may not be granted a time to pay order.

On the application's being made, the sheriff must normally make an interim order, which, on intimation to the creditor, advising him of his opportunity to object, partially freezes the execution of diligence against the debtor, so that the creditor may not proceed to a warrant sale, gain possession of goods previously arrested in the hands of third parties, nor arrest earnings of the debtor.

The making of the full order effectively freezes the execution of most forms of diligence against the debtor. Like a time to pay direction, a time to pay order may be recalled or varied by the sheriff on the application of either party. An order similarly lapses on the default of the debtor, or on the occurrence of any of the insolvency processes mentioned above in connection with the termination of a time to pay direction.

Part II remedies some of the problems associated with poinding and warrant sales. Formerly, the goods exempted from poinding were limited to simple items such as clothing, beds and tools of trade. But the valuation put on poindable items tended to be much below their market value.

The new rules are much more liberal in leaving the debtor with most of the articles to be found in a reasonably affluent household.

Clothing, medical aids, books and other educational items up to £500 in value, toys and other articles reasonably required for the use of the debtor or any member of his household or the upbringing of children of the household, no matter where situated, are exempt from poinding. So are tools of trade, books and other equipment up to £500 in value, reasonable required by the debtor or a member of his household for their profession, trade or business.

Also exempt is an extensive list of items, so long as they are in the dwelling house of the debtor and are reasonably required for use there by the household.

The Lord Advocate may vary the above financial limits and any of the items in the latter list.

Caravans, houseboats, being moveable, may be poinded, but if they are the debtor's, or another person's, only or principal residence, either of these may apply to the Sheriff who may order no further steps

to be taken for a specified time.

In addition, although articles in the common ownership of the debtor and a third party may be poinded, the co-owner may, inter alia, buy out the debtor's interest in the article, or require the creditor to reimburse him.

Poinding, which is carried out by an "officer of the court", that is a messenger-at-arms or a sheriff officer, may be executed only on week-days, and normally only between 8 am and 8 pm. The powers of forced entry to execute a poinding in a dwelling house are restricted.

Traditionally the value attributed to poinded goods has been notoriously low. Now the officer of the court must value them at their open market value, or call in the aid of a professional valuer if he considers this to be advisable. As second-hand modern furniture has a relatively low market value, the new rule may not make much difference (if indeed there is anything worth poinding after taking all the exemptions into account apart from, say, a second TV set and a microwave oven).

The debtor has 14 days after poinding to apply to the sheriff to release an article from the poinding, if the sheriff considers it would be unduly harsh in the circumstances to include it in the poinding and in any subsequent warrant sale.

Detailed rules of poinding procedure reproduce existing rules, with modifications. For example, the debtor will now have 14 days within which to redeem any poinded article at the appraised value, instead of the former on-the-spot "offer back", when he was unlikely to have much ready cash.

A poinding lasts a year from the date of execution.

The poinded goods may be sold only after a warrant of sale has been granted by the sheriff, following an application within the year to him by the creditor or an officer of the court.

Sale is by auction; if it does not take place in an auction room where the appraised value of the poinded articles does not exceed £1,000, an officer of the court appointed by the staff may conduct the warrant sale. The sale may not take place in a dwellinghouse without the written consent of the occupier or debtor. The creditor and debtor may agree to cancel the sale twice to give the debtor time to pay.

There are provisions protecting the interests of third parties whose goods have been poinded while in the debtor's possession, and to deal

with the situation when goods are owned in common by a debtor and a third party. Formerly, the latter class of goods could not be poinded for the debtor's debts.

Part III contains detailed provisions replacing arrestment of wages with three new diligences against earnings. "Earnings" is defined in detail, to include bonuses, commissions, pensions other than most public sector pensions, social security pensions or allowances, and various other periodical payments.

The new diligences are "earnings arrestment", "current maintenance arrestment" and "conjoined arrestment orders".

Earnings arrestment is for enforcing payment of any ordinary debt actually due at the date when diligence is executed, not for future debts.

Current maintenance arrestment is for enforcing payment of current maintenance due to be paid after execution of the arrestment. ("Maintenance" has the extended meaning mentioned above in discussing Part I.)

A conjoined arrestment order is to enforce payment of three or more debts owed to different creditors against the same earnings. The debts may be of different kinds, eg arrears and current maintenance due to a wife, and an unpaid electricity bill.

Part IV consists of a single section, which gives life to two schedules to the Act. These deal with the procedure for obtaining a summary warrant for enforcement of payment of central and local government taxes, and the associated new uniform procedure for poinding and sales following the issue of such a warrant. This new procedure is very similar to ordinary poinding procedure, and incorporates the new safeguards, especially as to the extensive range of household goods which may not be poinded.

Imprisonment for failure to pay rates and taxes is abolished, having been virtually unused for the past two decades. Imprisonment to enforce payment of arrears of aliment and fines for contempt of court survives.

Part V enables the Court of Session, by Act of Sederunt, to regulate the activities of officers of court and the procedure for their appointment, while continuing the system whereby they act as independent contractors. They have to obtain the permission of the sheriff principal if they wish to undertake for pay "extra-official" activities which are not actually prohibited by Act of Sederunt. These

must not be incompatible with their official function. This is designed to allow flexibility, so that debt collection might be permitted in a rural area, where the official load was relatively light.

The Court of Session is advised on the making of these Acts of Sederunt by the Advisory Council on Messengers-at-Arms and Sheriff officers, appointed by the Lord President. It consists of a Court of Session Judge as chairman, two sheriffs principal, two officers of court, two solicitors, the Lord Advocate's nominee and the Lord Lyon King of Arms.

The applications of sheriff officers for appointment as messengers-at-arms are vetted by the Court of Session, but the actual commission is granted by Lyon.

There are detailed rules for inspection of the work of officers of court, the investigation by a solicitor of alleged misconduct by them, and subsequent disciplinary proceedings before the relevant court.

Parts VI and VII deal with sundry procedural matters. Perhaps the most important points for the debtor-in-the-street to note are that money recovered goes first to pay the costs of poinding and sale, or of arrestment, interest following the decree of the court, and lastly the principal debt, interest thereon, and expenses of the court action. It is no longer necessary for the creditor to raise a further action to enforce payment of unpaid diligence expenses.

Chapter Number

23. *Register of Sasines (Scotland) Act*. This is a brief statute, enabling the Secretary of State to make regulations laying down methods of operation in the Register of Sasines. These are the manner in which deeds are recorded, and the making available of the Register to the public for inspection.

The Act and regulations made under it do not affect the law as to the contents of the Register, nor the evidential value of the Register or of extracts from it.

The somewhat opaque language of the Act means that the records in the Register may be kept in any format prescribed by the Secretary of State in regulations. It was explained in Parliament that the immediate intention is to switch records of deeds to microfiche. Searchers will be provided with several microfiche copies, and so not have to wait until bound volumes are free, as at present.

The Secretary of State already had extensive rule-making powers to regulate the making up and keeping of the Land Register of Scotland

under the *Land Registration (Scotland) Act 1979 (c 33)*.

Chapter Number

26. *Housing (Scotland) Act*. This Act consolidates housing legislation derived from over forty Acts passed between 1914 and 1986. As there has been at least one Act on this topic in all but two of the past twenty-one years, this is most welcome to the user. However, within less than four months of its coming into force, yet another Housing (Scotland) Bill had been introduced in the House of Commons.

Chapter Number

36. *Prescription (Scotland) Act*. This Act contains a minor amendment to the Act of the same name, passed in 1973 *(c 52)*, designed to correct an anomaly resulting from the combined effects of the *Bankruptcy (Scotland) Act (c 66)* and the *Insolvency Act 1986 (c 45)*. It retroactively restores the rights of creditors, lost on 29 December 1986 (when the relevant provisions of these statutes came into force), whereby the presentation if, or the concurring in, a petition for the winding up of a company, or the submission of a claim by a creditor in the liquidation of a company, interrupt the running of prescription (that is, the time limits) on the debt claimed.

Chapter Number

40. *Registered Establishments (Scotland) Act*. This Act consists of a series of textual amendments to the *Social Work (Scotland) Act 1968 (c 49)* and the *Nursing Homes Registration (Scotland) Act 1938 (c 73)*. It brings Scottish arrangements into line with those applying to England and Wales, now consolidated in the *Registered Homes Act 1984 (c 23)*.

The Act modifies the definition of establishments that are required to register with the local authority, that is, a regional or islands council, or the Secretary of State, as may be directed under the 1968 Act. The test is that the whole or a substantial part of the function of a residential or other establishment is to provide people with personal care or support, with or without board, and whether for reward or not.

The definition does not apply to an establishment already controlled or managed by a central or local government authority or required to be registered with them under any other enactment.

Grant-aided and independent schools which provide the care or support as mentioned above as well as education may now also apply for registration under the 1968 Act, but are not required to do so. Formerly, if registered as schools they could not be registered for social work purposes.

The certificate of registration does not relate to any part of the establishment used exclusively for educational purposes.

Details of the appointment and departure of the manager, if he is not the owner, must be notified to the local authority within 28 days. Similarly, 28 days' notice of the intention of a registered person to cease to operate a registered establishment must be given to the local authority.

The local authority may cancel registration on any ground that would have justified refusal of registration in the first place, for failure to notify change of manager or to pay the annual registration fee, or if the owner or anyone else involved in running the establishment has been convicted of any offence relating to the conduct of an establishment.

Registration requires compliance with conditions for operating the establishment laid down by the local authority, which may be varied from time to time.

There are provisions for making representations to the Secretary of State or the local authority against proposed, new or varied conditions followed by a hearing. Following the eventual decision, there may be an appeal to an appeal tribunal established under the *Social Work (Scotland) Act 1968*.

Independent establishments which provide both nursing and residential care, to be known as "jointly registrable establishments", must be registered under both the 1938 Act and the 1968 Act, that is, with both the local Health Board and the local authority.

Local authorities will recoup the cost of administering registration and inspection of premises by charging fees for applications for registration or variations of conditions, and renewal of registration. Maximum fees to be charged are fixed by the Secretary of State. He will also fix the actual fees to be charged by local Health Boards.

Chapter Number

41. *Criminal Justice (Scotland) Act*. This Act falls into two parts. Part I stems from the Fifth Report of the Home Affairs Committee: "Misuse of Hard Drugs – Interim Report" (1984-85 HC 399), published in 1985, and follows similar provisions applicable to England and Wales under the *Drug Trafficking Offences Act 1986 (c 32)*.

Somewhat unusually for what purports to be a "Scotland only" Act, several sections apply to England and Wales, and a few to Northern Ireland, in order to secure a United Kingdom-wide system of enforcement, to deprive traffickers of their ill-gotten gains.

When a person is convicted in the High Court of trafficking in "controlled drugs" as listed in Schedule 2 to the *Misuse of Drugs Act 1971 (c 38)* and associated offences, the prosecutor may, when he moves for sentence (or, where the accused is remitted to the High Court for sentence, before sentence is pronounced) apply to the Court inviting it to make a confiscation order. This orders the accused to pay whatever the Court considers appropriate out of the proceeds of his drug trafficking activities. This may be in addition to a fine, imprisonment or other form of penalty.

Perhaps exceptionally, the accused's drug trafficking activities taken into account by the court may include some which have not been the subject of criminal proceedings, and the intention of the Act appears to be that they need not be restricted to Scotland. Overseas activities would be relevant.

The making of a confiscation order may be postponed by the Court for up to six months after conviction, to enable further information to be obtained before it comes to a decision.

The Act lays down rebuttable assumptions that the Court may make in assessing the sum to be paid, and sets out in detail what property is realisable, basically (subject to qualifications) his whole estate worldwide and also that of recipients of what are perhaps somewhat ambiguously termed "implicative gifts". These are gifts made within six years prior to the granting of a warrant to arrest, or of a constraint order against,the accused, as well as gifts made at anytime, if tainted in virtually any way by drug trafficking. The formulae for valuing the gifts, or gifts disguised as sales, is designed to inflate their value in favour of the realising authorities.

Failure to make the payment required under a confiscation order may lead to imprisonment. Where a confiscation order is in excess of a million pounds, the term of imprisonment for default is 10 years. This period of imprisonment will run from the expiry of any other period of imprisonment imposed on the trafficker originally, or itself imposed for default of payment of a fine.

At the very beginning of proceedings against a suspected trafficker, the Lord Advocate may apply to the Court of Session for a "restraint order". This order interdicts the suspect from dealing with his realisable property, and also any third party named in the order as appearing to the Court to have received an "implicative" gift from the suspect, from dealing with that property.

As a belt and braces operation, the Court of Session is further

empowered to interdict a person not subject to a restraint order from dealing with realisable property.

Realisable property will be dealt with by an administrator appointed by the Court of Session on the application of the Lord Advocate.

Since this is an international problem, there are provisions for the enforcement of confiscation orders made in the rest of the United Kingdom or in countries designated by Order in Council, following registration by the Court of Session. Similarly there are provisions for enforcement of Scottish orders furth of Scotland.

In very limited specified circumstances, compensation is payable by order of the Court of Session on an application's being made by the holder of realisable property who has suffered substantial loss or damage and satisfies the Court that there has been serious default by an investigator, namely, a police constable (or a constable under any other authority, eg Railway police), a procurator fiscal or agent of the Lord Advocate, or Customs and Excise officers.

The Act Contains provisions to avoid conflicts between the procedures discussed above and those laid down under personal bankruptcy and company insolvency legislation.

Anyone doing "anything which is likely to prejudice the investigation" (*sic*) is guilty of an offence and liable to a fine or up to five years' imprisonment, or both. Anyone helping a trafficker to hold on to the proceeds of his trafficking in virtually any conceivable way may suffer a fine or up to fourteen years' imprisonment, or both. Where the trafficker himself is sentenced to imprisonment, the Court must also impose a fine unless it is satisfied that it would be inappropriate to do so; if it makes a confiscation order, it has discretion to add a fine.

Part II of the Act is rightly headed "Miscellaneous".

A customs officer may detain an individual suspected of offences punishable by imprisonment for up to six hours for questioning and search. The suspect must be informed that he is not obliged to give any information other than his name and address, and of the officer's suspicion, the general nature of the alleged offence and the reason for detention. Details of the whole proceedings must be recorded.

The suspect must be told that he is entitled to have a solicitor or one other person "reasonably named by him" notified of his detention with as little delay as is necessary. In the case of a child under 16 the officer must similarly advise the child's parent, who must be given access to the child, except when the parent is also a suspect, when

access is discretionary.

For suspicion of certain drug smuggling offences, an individual may be detained for up to 24 hours. This period may be extended by the sheriff, on the application of the procurator fiscal, to seven days. During this detention the individual may be required to provide specimens of blood or urine and submit to intimate body searches carried out by a registered medical practitioner.

Fixed penalties are well-known in relation to motoring offences, as an alternative to prosecution. The procurator fiscal is now given discretion, in the case of offences triable in a district court, to make a conditional offer to the alleged offender. Under this offer, which will indicate the fixed penalty offered, and details of alternative instalment payments, the alleged offender will normally have 28 days to decide whether to accept the offer by paying the full amount or the first instalment. If he does so, any liability to conviction will be discharged. If he falls down on his instalments, recovery of the balance will be by means of civil diligence.

The fixed penalty for these offences will be not more than level 1 on the standard scale, set by an order of the Secretary of State subject to annulment by either House of Parliament.

The limit of the sentencing power of sheriffs for offences punishable on conviction on indictment (ie with trial by jury) to two years' imprisonment is now raised to terms of up to three years.

Children found guilty in summary proceedings before the sheriff, where imprisonment may be imposed on persons aged 21 or more, may be detained (by order of the sheriff) by the appropriate regional or islands council in residential care anywhere in the United Kingdom, as seems appropriate to that council, for up to one year.

Certified transcripts of recordings of interviews between a police officer and an accused person will be receivable in evidence and (subject to challenge as to their making or their accuracy by the accused at least six days before the trial) they will be sufficient evidence of the making and accuracy of the transcript.

The Act concludes with a miscellany of further relatively minor amendments to both substantive and procedural criminal law.

Chapter Number

47. *Abolition of Domestic Rates Etc. (Scotland) Act*[1] Since the early days of this century there have been investigations into and comments on the problem of finding acceptable techniques for financing local

government expenditure. A Royal Commission reported in 1902 (Cd. 1067). In 1926, Whyte, in *Local Government in Scotland*, commented on the unpopularity of the existing rating system. It has undergone modest variations since then, and in the lifetime of the present government the path to change was paved by two Green Papers, *Alternatives to Domestic Rates* (Cmnd 8449 (1981)) and *Paying for Local Government* (Cmnd 9714 (1986)).

The Bill to introduce similar legislation for England and Wales that was making its way through Parliament in the first half of 1988 underwent so many amendments that by the time this present Act is fully in force it will undoubtedly also be much amended in order to harmonise with the provisions to be applied south of the Border.

The Act opens with the proclamation that domestic rates are to be abolished with effect from 1st April 1989. The term, as a technical legal expression, is in fact created in this Act for the first time, only to die within less than two years.

The abolition of domestic rates is achieved by the simple device of providing that "domestic subjects" (another neologism) shall cease to be entered in the valuation roll from 1989-90 onwards. The definition of "domestic subjects" is minimal. Since the contents of the definition may be added to and subtracted from by regulations, any attempt at present to obtain a picture of its precise meaning is like trying to photograph Lewis Carroll's Cheshire Cat.

The Secretary of State will be able to prescribe by regulations according to a statutory formula the maximum non-domestic rate for each authority. This rate will be levied not only on entirely non-residential subjects, but also on "part residential" (sic) subjects, as defined in the Act and as to be further defined in regulations. There will thus be non-domestic regional, district and islands rates.

Various aspects of compensation for compulsory purchase, eligibility for house improvement grants, the apportionment of liability for repairs to roofs and common stairs in tenements, and other schemes, are affected by valuation for rating, whether expressed as assessed rental, gross annual value, net annual value or rateable value. Accordingly, the valuation rolls existing before 1st April 1989 are to be kept alive, and if necessary amended to take account of changing circumstances, and the creation of new domestic subjects, as if they had been in existence before that date. In twenty years' time, allowing for inflation, they should look very out of date.

Although the media have persisted in talking and writing about "the Community Charge" – described abusively by its critics as "the Poll

Tax" – the new charge which replaces domestic rates in fact comes in a multiplicity of guises. There are regional community charges and district community charges, for which the levying authority will be the regional councils, and the islands community charges, levied by the islands councils. These charges are then subdivided into the personal community charge, the standard community charge and the collective community charge. They will normally be payable in 12 equal monthly instalments.

The personal community charge is to be levied on persons aged 18 or over who are or become solely or mainly resident in the area of a local authority, payments being adjusted *pro rata* as their names move into or out of the relevant register.

Persons undergoing a full-time course of education are to be deemed to reside in the area of the local authority where they reside during *term time*. These students will be entitled to a discount on the personal community charge for which they would otherwise be liable. The meanings of these italicised phrases and the measure of the discount are to be prescribed in regulations.

Spouses living together and couples cohabiting in a heterosexual relationship will be jointly and severally liable for the personal community charges. This means that if one of the spouses or one member of the couple does not pay up, the other will be liable.

There are rules granting exemption from liability, some of which are likely to be somewhat difficult to understand and apply. Those exempt are persons aged 18 in respect of whom child benefit is payable, and severely mentally handicapped persons. Also exempt are persons other than full-time students mentioned above who are solely or mainly resident in premises in respect of which a collective community charge is payable, and persons whose sole or main residence is subject to non-domestic rates, other than those who are solely or mainly resident in part residential subjects. Some clarification was attempted by the government spokesman in the House of Lords, but further elucidation will have to await the effect of the "Cheshire Cat" regulations mentioned above.

Local authorities will fix their personal community charges after the non-domestic rate has been determined and the new revenue support grant order has been made, and taking into account the revenue from the standard and collective community charges.

The standard community charge will be payable in respect of second homes by the owner, or, where the property is let or sub-let for 12 months or more, by the tenant or sub-tenant. The amount of the

charge will be between one and two times the personal community charge, according to the multiplier determined by the relevant local authorities. If the person liable to pay the standard community charge lets or sub-lets the property, he has a right of relief against the tenant or sub-tenant calculated by apportionment on a daily basis. Where premises are unoccupied or unfurnished, the charge is not payable for up to three months in any financial year.

Variations on this theme can be played by the Secretary of State, because he may prescribe in regulations a class or classes of premises to be exempt from this category; the criteria for so doing are themselves to be laid down by him in separate regulations.

Faimilies may apparently reduce their collective charge liability should one or more members elect to regard the second – or, for that matter, third – home as their sole or main residence.

The collective community charge is targetted by way of somewhat obscure rules – naturally to be supplemented by regulations – at those persons who are likely to fail to come within the earlier provisions of the Act, by residing in the relevant premises, such as a women's refuge, normally only for a short time. On the other hand, long-staying guests in a boardinghouse would be liable to the personal community charge.

The collective community charge will be payable by the owner or by a tenant or sub-tenant of the premises with a lease of at least 12 months, that is, the person normally in effective control of the premises. For any given premises, the collective community charge will be the product of the personal community charge and a collective community charge multiplier fixed by the registrar in relation to these particular premises. It will be fixed by estimating the number of persons who are solely or mainly resident in these premises, and who would otherewise be liable to pay the personal community charge, and by reference to factors to be prescribed in regulations. The payer of the charge will recoup it by charging individual residents a collective community charge contribution *pro rata* on a daily basis.

The Community Charges Registration Officer is the regional or islands area assessor, thus guaranteeing a measure of professional independence. (This office is combined for the Highland region and the three islands areas).

The register is required to show the name and address of the payer of each of the several community charges, and in particular the date of birth of each natural person registered. This last item has been a matter of perhaps surprising concern to some people, but, now that

the date when individuals reach the age of majority appears on the voters' roll, eventually the diligent researcher will be able to establish the date of birth of virtually anyone he or she pleases who lives to adulthood. Objectors appear to overlook the fact that individuals using a driving licence as a means of establishing identity reveal their date of birth.

Rights of access to the register are limited. Various officials will have fairly extensive rights of access, but most limited will be those of the general public except for inspection of the entry relating to oneself.

In addition to the above community charges, and much less publicised, are the personal, standard and collective community water charges, which will operate in tandem with the other community charges. There will also be a non-domestic water rate. Sewerage services are to be paid for out of the community charges and non-domestic sewerage rates.

There are provisions enabling the Secretary of State to secure reductions of the community charges imposed by any authority and for schemes to provide rebates on community charges, but not on community water charges.

There are complicated rules for the fixing of the maximum non-domestic rate which each local authority may impose. They will be linked to the retail prices index, but subject to reductions to take into account revenue attributable to water and sewerage services.

Just as local authorities could not delegate the rate-fixing power to a committee, sub-committee or an official, so they may not delegate the determining of any of the new charges or rates.

The rate support grant is to be replaced by a revenue support grant, consisting essentially of a "needs" grant and a *per capita* amount.

Most commentators indicate that the new system of local taxation will be considerably more expensive to administer than the collection of rates which it replaces.

Chapter Number

56. *Scottish Development Agency Act*. This Act increases the total permitted borrowings of the Scottish Development Agency and its subsidiaries from £700 million which was fixed in 1981 by the *Industry Act 1981 (c 6)*, to £1,200 million.

These borrowings come in a variety of forms, such as borrowing from the National Loans Fund, loans guaranteed by the Treasury, loans

from the European Investment Bank and the European Coal and Steel Community, and also by way of payments from the Secretary of State consisting of grants-in-aid (less administrative expenses plus public dividend capital issues).

The original limit set by the *Scottish Development Agency Act 1975 (c 69)* was a mere £200 million.

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References

1. The recent history and many other aspects of the background to this Act were discussed by Archie Fairley in "The Community charge and Local Government Finance in Scotland", *Scottish Government Yearbook 1988*, pp 46 -61.